Ingham County Circuit Court
30th Judicial Circuit
P.O. BOX 19304
303 W. KALAMAZOO STREET
LANSING, MI 48901-9304
TELEPHONE: (517) 483-6105
FAX: (517) 483-6158

Re: Proposed Court Rule Revisions—ADM File No. 2005-04
MCR 3.915, 3.963, 3.965, 3.966, 3.972, 3.973, 3.974, 3.975, 3.976 and 3.978

Comments on Proposed Revisions to Michigan Court Rules

MCR 3.963(B)--Protective Custody of Child

Under the proposed revision, limiting the individuals authorized to take custody of a child to "a child protective services worker or designee" and eliminating a peace officer, would place too much authority with CPS. It is proposed that the revision to this rule be as follows:

"The court may issue a written order authorizing a child protective service worker, an officer, or other person deemed suitable by the court, to immediately take a child into protective custody…"

MCR 3.97--Post-Dispsositional Procedures: Child at Home

The proposed change to MCR 3.974(A) (1) that eliminates the language that "[a] progress review does not require a hearing" poses some issues. Since there is no specific definition of a "hearing" in the law as it relates to these types of cases, it would seem that progress reviews must now be held on the record . [See MCL 712A.19(2)&(6) and 712A.17(1)]. That being the case, two questions arise—(1) Who can conduct those hearings? and (2) Depending on who holds the hearings, will additional recording equipment need to be obtained along with certification to record the progress review hearings? To begin, the proposed rule changes are not seeking to amend the rule regarding what hearings may be conducted by attorney referees and non-attorney referees. Non-attorney referees may conduct a progress review hearing. [MCR 3.913(A)(2)(b).] If a court wants to continue to use non-attorney referees to conduct progress reviews, then those hearings will either have to be on the record with a court recorder/reporter present, or the referee conducting the hearing must be certified to record their own hearings. (See 12-15-06 Memo from SCAO on Application of MCR 8.108.) Depending on the direction a court decides to take in this instance, there may be a need for additional expenditures for recording equipment, court reporters/recorders and/or certification for recording; or, adjustment of hearing schedules for judges or attorney referees to accommodate the additional hearings required to be on the record.

Another area for comment is the total elimination of emergency removal hearings from the court rule MCR 3.974(B) and replacing that procedure with one requiring the filing of a

supplemental petition and a preliminary hearing held in accordance with MCR 3.965. In other words, in a situation where the court already has jurisdiction and the child remains in the home, the proposed changes make it clear that to remove a child from home will require a procedure akin to that at the initiation of an abuse/neglect case. There will be a preliminary hearing, pre-trial/trial, and disposition. If this proposed revision is adopted, the primary result will be the additional court time that may be necessary to resolve this type of a situation. It is unclear if the proposed rule change would actually benefit children or their families, particularly considering the additional amount of time that may be required to resolve such situations.

With the emergency removal procedure, the decision to remove is made or confirmed at the emergency removal hearing, with a disposition (either contested or not) scheduled within 14 days. Since an emergency removal is held post-adjudication, it is considered to be dispositional and the rules of evidence do not apply so that hearsay that is reliable may be relied upon by the court. The current emergency removal procedure is fairly expeditious.

The proposed revision would require a hearing to authorize the petition for filing along with a placement decision, scheduling for a pre-trial with a possible plea, possible trial on the petition within 63 days, and later disposition. The rules of evidence would apply and only legally admissible evidence could be relied upon by the court. Further, the proposed revision may allow for a jury trial to be available to the parties, even though jurisdiction has already been established. More than likely, attorneys assigned to parents will, in a number of cases, demand that the more protracted procedure be followed.

Making it more difficult to remove a child from a parent, when the court already has jurisdiction, is not preferable. If the reason that this revision is being suggested is because there is concern that appropriate "contrary to welfare" and "reasonable efforts to prevent removal" findings are not being made in some instances at emergency removal hearings, thus effecting Title IVE funding; then other revisions to the emergency removal portion of the court rule should be made. For instance, findings under 3.965(C)(3) and (D)(1) could also be mandated at the emergency removal hearing, with the appropriate revisions made to the Order After Emergency Removal adding findings for reasonable efforts to prevent removal. Further, MCR 3.974(B)(3)(b) could be amended to indicate that the parent/guardian/custodian not only has the ability to make a statement as to why the child should not be removed or should be returned, but also has the right to question the petitioner regarding the factual basis for the contrary to welfare determination. Other interested parties would have the ability to then question the petitioner as well as the parent, guardian or legal custodian regarding the allegations in the petition.

<u>MCR 3.975(H)--Post-Dispositional Procedures: Child in Foster Care</u>

To begin, this provision should not be deleted since it is allowed under MCL 712A.19(10).

The revision would eliminate the provision in the court rule allowing for the return of a child to their parent without a dispositional review hearing. The elimination of that provision would require a dispositional review hearing before a child is returned home. [See 3.975 (G)(1).] More than likely, requiring a dispositional review hearing will slow the process of the return of children to parents. Clearly this type of a process, if not done at a the time of a previously scheduled dispositional review, will require added time for the caseworker/court clerk/judicial assistant to determine courtroom availability and to contact all relevant parties and their

attorneys to determine availability for a hearing, along with the additional time and paperwork needed to send the required notice, unless waived. The current procedure of notifying all parties of the impending return, along with the written approval (at least in Ingham County) by the attorney/GAL for the return home of a child, seems to be adequate for the welfare of the child. Since it is extremely rare that a case would be dismissed outright at the time of return, services for the family will remain in place and active. It is usually not possible to accurately predict when a family may be ready for the return of a child to their care and/or when services can be put in place to assist the family upon the return of the child. Further, if a dispositional review hearing is required to return a child, the assigned foster care worker will more than likely have to do a written report, although testimony (with transcript) would suffice. Requiring the caseworker to produce one of their ridiculously lengthy reports to simply return a child home seems inefficient at best. If a written report is required, it is strongly suggested that an addendum to an earlier filed USP be utilized.

MCR 3.97(E)(3)--Permanency Planning Hearings: Other Permanency Plans

Last, the new, unnumbered final provision under MCR 3.97(E)(3)--Permanency Planning Hearings: Other Permanency Plans-- indicating that the "court must articulate the factual basis for its determination in the court order adopting the permanency plan" should be eliminated. If at a PPH the child is not returned and permanent wardship is not being sought, then three options are available under the new scheme--short term foster care, placement with a fit and willing relative, or placement in another planned permanent living arrangement. Guardianship should be added as another permanency option, since guardianship is an allowable option under federal regulation. See 45 CFR 1355.20(a)(1)(iii) and 45 CFR 1356.21(b)(2)(i). While the new court form (JC 64) allows room to "articulate" the reasonable efforts made to finalize the court-approved permanency plan for each child, it does not provide a specific space to "articulate" the factual basis for the court's determination as to why a particular permanency plan was chosen, unless those findings are to be equated with the findings regarding reasonable efforts to finalize. Further, it is questionable whether such a finding must be articulated in the order, since federal regulation allows for a transcript of the court proceedings to verify that the required determination has been made. See 45 CFR 1356.21(d)(1).

Respectfully submitted,

Dated:_____

_____
Janelle Lawless, Presiding Judge
Family Division, 30th Judicial Circuit